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2 **PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE**  
3 **REPEALING AND CREATING A RULE**  
4

5 To repeal Subchs. III and IV of ch. 8 and to create ch. Ins 19, Wis. Adm. Code, relating to  
6 health insurance.

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8 **ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE**

9 Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), Stats.

10 Statutes interpreted: ss. 600.01, 628.34 (12), 632.745 to 632.7945, and ch. 635, Stats.

11 This rule revises standards governing group, association, and individual health insurance to  
12 reflect the requirements of the Health Insurance Portability and Accountability Act of 1996, U.S.  
13 P.L.104-191 (HIPPA), the Interim Rule under HIPAA adopted by the Federal Health Care Financing  
14 Authority, and changes in the Wisconsin Statutes reflecting those laws and regulation. The rule does  
15 the following:

16 1. Makes clear an insurer must cover a late enrollee under any employer health insurance  
17 policy, but permits the insurer to impose not more than a combined 18-month preexisting condition or  
18 affiliation period.

19 2. Makes clear that an insurer may not subject a new entrant, including a person who  
20 originally waived coverage during initial enrollment to accept alternative coverage, to more than a 12-  
21 month preexisting condition exclusion.

22 3. Makes clear that an insurer providing health insurance coverage to an employer may:

23 a. Limit issuance of coverage to those employees and their dependents who are included in  
24 a nondiscriminatory eligibility class established by a large employer.

25 b. Limit issuance of coverage to those employees and their dependents who are included in  
26 a nondiscriminatory class established by a collectively bargained agreement.

27 c. Issue coverage to an employer who has varying levels of contribution toward premium,  
28 but only if the classes are nondiscriminatory and the insurer consistently applies uniform minimum  
29 contribution requirements.

1 4. Makes clear that an insurer is not required to offer coverage to an individual who is not  
2 actively at work.

3 5. Makes clear that standards for health insurance coverage provided to or through an  
4 employer apply regardless of whether the coverage is denominated association group, group, or  
5 individual coverage.

6 6. Removes requirements that an insurer provide certain notices if an employer ceases to  
7 qualify as a small employer but retains requirements that an insurer permit an employer to “cure”  
8 inadequate participation to prevent nonrenewal or cancellation on that basis.

9 7. Prohibits an insurer from imposing more stringent participation requirement, for either  
10 small or large employers, than 70% (other than in dual enrollment).

11 8. Make various changes to reflect the repeal of the basic health insurance plan.

12 9. Makes clear that an insurer may permit application of no more than a 6-month probation  
13 period for eligibility for coverage under a policy issued to either a small or large employer.

14 10. Permits an insurer to issue coverage only through a bona fide association and market  
15 coverage only to persons eligible to join the bona fide association, subject to certain requirements, but  
16 prohibits insurers from otherwise marketing only to certain market segments.

17 11. Makes clear that an insurer may refuse to issue coverage to a small employer if the  
18 small employer was cancelled or non-renewed by the insurer for failure to pay premium, or for fraud,  
19 but only for a period of one year.

20 12. Permits an insurer to decline to issue coverage to a small employer on the basis that  
21 small employer employees are not within the insurer’s provider service area, but only if the insurer  
22 adopts reasonable criteria and applies the criteria uniformly without regard to health status.

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24 **SECTION 1. Subchs. III and IV of ch. 8 are repealed.**

25 **SECTION 2. Chapter Ins 19 is created to read:**

CHAPTER 19

26 GROUP, ASSOCIATION, INDIVIDUAL, AND SMALL EMPLOYER HEALTH INSURANCE  
27

SUBCHAPTER I  
GENERAL PROVISIONS

**Ins 19.01 Purpose.** This chapter interprets and implements chs. 628, 632 and. 635, Stats.

**Ins 19.02 Definitions.** In addition to the definitions in ss. 632.745 and 635.02, Stats., in this chapter:

(1) "Commissioner" means the commissioner of insurance.

(2) "Employee" for the purpose of ss. 632.745 to 632.7495 and ch. 635, Stats, and this chapter, does not include an individual who is not regularly performing assigned duties.

(3) "Initial enrollment period" means a period prior to issuance of a policy during which all eligible employees, and dependents of all eligible employees, or all eligible employees and their dependents in a class permitted under s. Ins 19.20, are entitled to enroll in coverage under the policy.

(4) "Large employer policy" means a policy where the employer is a large employer as defined under s. 632.745 (16), Stats.

(5) "Late enrollee" has the meaning provided under s. 632.745 (18), Stats. For the purposes of this chapter and s. 632.746 (1) (b), Stats., "late enrollee" does not include an individual eligible for coverage under s. 632.746 (6), Stats.

(6) "New entrant" means an eligible employee, or dependent of an eligible employee, who is employed in a position included in a class permitted under s. Ins 19.20 establishing eligibility for an initial enrollment period.

(7) "Office" means the office of the commissioner of insurance.

(8) "Policy" means a group health benefit plan as defined under s. 632.745 (6), Stats. "Policy" includes, but is not limited to:

(a) An individual health benefit plan, including, but not limited to an individual health benefit plan which is intended or designed to supplement another health benefit plan, and issued by an insurer to an eligible employee if 3 or more eligible employees of the same employer apply for the coverage or are intentionally excluded from applying for reasons related to their health, and the individual health benefit plan is in fact, or in substance, sold to, or through active cooperation of, the employer, including but not limited to circumstances where:

1                   1. Premium is collected through a direct or indirect arrangement with the employer;

2                   2. The individual health benefit plan is in substance a replacement for group health benefit  
3 plan coverage provided through the employer;

4                   3. The employer directly or indirectly contributes toward a portion of the premium for the  
5 individual health benefit plan; or

6                   4. An eligible employee is solicited to purchase the individual health benefit plan on the  
7 premises of the employer and with the consent and cooperation of the employer or the employer  
8 participates in the solicitation of the eligible employee.

9                   (b) A health benefit plan that provides coverage through a trust or association, evidenced by  
10 a certificate or otherwise, including, but not limited to, coverage intended or designed to supplement  
11 another health benefit plan, and issued to an employer or in fact or substance, sold to, or through the  
12 active cooperation of, an employer, including but not limited to circumstances where:

13                   1. Premium is collected through a direct or indirect arrangement with the employer;

14                   2. The coverage is in substance a replacement for group health benefit plan coverage  
15 provided through the employer;

16                   3. The employer directly or indirectly contributes toward a portion of the premium for the  
17 coverage; or

18                   4. An eligible employee is solicited to purchase the coverage on the premises of the employer  
19 and with the consent and cooperation of the employer or the employer participates in the solicitation of  
20 the eligible employee.

21                   (9) "Risk characteristic" means the health status, claims experience, duration of coverage, or  
22 any similar characteristic related to the health status or experience of a small employer group or of any  
23 member of a small employer group.

24                   (10) "Risk load" means the percentage above the applicable base premium rate that is  
25 charged by a small employer insurer to a small employer to reflect the risk characteristics of the small  
26 employer group.

27                   (11) "Small employer insurer" has the meaning provided under s. 635.02 (8), Stats.

1 (12) "Small employer policy" means a policy where the employer is a small employer as  
2 defined under s. 635.02 (7), Stats.

3 **Ins 19.03 Disclosure; participation requirement restrictions.** An insurer shall include in  
4 each policy all of the following:

5 (1) On the face page or first page, a statement that the policy is guaranteed renewable  
6 except for the reasons stated in the policy, which shall be consistent with s. 632.749, Stats.

7 (2) A statement of the minimum number of eligible employees required in order to keep the  
8 policy in effect, expressed either as a schedule or as a percentage of eligible employees or both. The  
9 insurer shall state the method for determining the minimum number required in the policy or employer  
10 agreement. For purposes of this section, "eligible employee" does not include any person who has  
11 continued coverage under s. 632.897 (2) (b) 2, Stats., under an employer's group policy and the number  
12 of individuals in a group shall not include individuals with other creditable coverage except as permitted  
13 under s. 635.746 (9) (d), Stats. An insurer may not impose more stringent requirements than the  
14 following:

15 (a) For a group or a class of employees permitted under s. Ins 19.20 with more than 10 eligible  
16 employees, 70% of the eligible employees.

17 (b) For a group or a class of employees permitted under s. Ins 19.20 with 10 eligible employees,  
18 6 eligible employees.

19 (c) For a group or a class of employees permitted under s. Ins 19.20 with 8 or 9 eligible  
20 employees, 5 eligible employees.

21 (d) For a group or a class of employees permitted under s. Ins 19.20 with 7 eligible employees,  
22 4 eligible employees.

23 (e) For a group or a class of employees permitted under s. Ins 19.20 with 5 or 6 eligible  
24 employees, 3 eligible employees.

25 (f) For a group or a class of employees permitted under s. Ins 19.20 with 2 to 4 eligible  
26 employees, 2 eligible employees.

27 **Ins 19.10 Guaranteed renewability; cancellation and renewal restrictions.** (1) (a) An  
28 insurer that intends to non-renew a policy or terminate a large or small employer policy under s. 632.749,

1 Stats., because the number of eligible employees is less than the number required to keep the policy in  
2 force shall do all of the following:

3 1. Notify the employer of its intent to non-renew or terminate and the reason for the non-  
4 renewal or termination. The notice shall be given as required under s. 631.36, Stats., for a non-renewal  
5 or at least 20 days before the termination date for a termination.

6 2. Offer to continue the employer's coverage for not less than 60 days after the non-renewal  
7 or termination date in order to allow the employer to increase the number of eligible employees to the  
8 required number.

9 3. Provide the additional coverage, if the employer accepts the offer under par. (b) before the  
10 non-renewal or termination date and pays the premium for the additional coverage at the rate in effect at  
11 the time the additional coverage is provided.

12 (b) An insurer may not non-renew a policy or terminate a policy under s. 632.749 (2) (c),  
13 Stats., if the reason the number of eligible employees is less than the required number is due to an  
14 employee's sickness or injury, approved leave of absence or temporary layoff. The insurer may establish  
15 participation requirements and reasonable verification procedures as part of the policy or employer  
16 agreement.

17 (c) An insurer may not take into consideration factors related to an individual employer's claim  
18 experience in deciding whether to non-renew a policy or terminate a policy under s. 632.749 (2) (c), Stats.

19 (2) Health benefit plans which are individual health benefit plans subject to s. 632.7945,  
20 Stats., include, but are not limited to, the following:

21 (a) Group or blanket insurance other than large or small employer policies; and

22 (b) Insurance offered through an association, whether group coverage or otherwise, other  
23 than a large or small employer policy.

24 (3) An insurer that intends to terminate or non-renew a policy under s. 632.749 or s.  
25 632.7945, Stats., shall comply with the notice requirements under s. 631.36, Stats.

26 (4) An insurer discontinuing offering of coverage under s. 632.749 or s. 632.7945, Stats.,  
27 shall, in addition to complying with the notice requirements of s. 632.749 or s. 632.7945, Stats., comply

1 with all other requirements under the law, including the notice requirements of ss. 631.36, 632.79 and  
2 632.897, Stats.

3 **Ins 19.20 Initial enrollment and discriminatory coverage.** (1) Except as permitted under  
4 subs. (2) to (5) an insurer that offers a policy shall provide an initial enrollment period during which each  
5 eligible employee and dependent of an eligible employee is entitled to enroll in coverage under the policy.

6 (2) An insurer may offer, or participate in an offer, to all eligible employees, or, if permitted  
7 under sub. (3) or (4), to a class of eligible employees, of a choice by the eligible employee among 2 or more  
8 policies for coverage of the eligible employee and the eligible employee's dependents, but only if:

9 (a) The enrollment period is simultaneous for all the policies; and

10 (b) The eligible employee may choose any one of the offered policies.

11 (3) Subject to s. 632.748, Stats., an insurer may restrict its offer of a large employer policy to  
12 a class of eligible employees and their dependents determined by the employer, but only if:

13 (a) The employer establishes the class without influence by the insurer or an agent of the  
14 insurer;

15 (b) The insurer offers to the employer issuance of a policy to cover all eligible employees and  
16 their dependents;

17 (c) The class is not established in violation of s. 632.748, Stats., or by the large employer in  
18 violation of 26 U.S.C. 9802; and

19 (d) The insurer determines that the class is permitted under this subsection.

20 (4) Subject to s. 632.748, Stats., an insurer may restrict its offer of a policy to a class of  
21 eligible employees and their dependents determined by the employer but only if the insurer determines  
22 that:

23 (a) The class is not established in violation of s. 632.748, Stats., or by the large employer in  
24 violation of 26 U.S.C. 9802; and

25 (b) The class is established by a bona fide collective bargaining.

26 (5) An insurer may permit a large or small employer to establish classes for employer  
27 contribution levels for a policy but only if the insurer:

(a) Determines the class is not established in violation of s. 632.748, Stats., or by the employer in violation of 26 U.S.C. 9802;

(b) Establishes a minimum employer required contribution level which is applied uniformly to all employers and which varies only by employer size; and

(c) Requires the employer to pay not less than the minimum required contribution level for each covered eligible employee and the eligible employee's dependents.

(6) Except as permitted by this section an insurer shall issue the same coverage under any policy to each eligible employee and dependent.

**Ins 19.30 Large and small employer policies; new entrants and individuals switching coverage.** (1) An insurer shall provide under a policy for an enrollment period during which a new entrant is entitled to enroll in coverage under the policy. The insurer shall provide an enrollment period under a policy of at least 30 days after the date the new entrant is notified of the opportunity to enroll. An insurer which offers more than one policy in the initial enrollment period shall offer the new entrant the same choice of policies during the new entrant's enrollment period. An insurer may restrict its offer to new entrants to those eligible under a class permitted for the initial enrollment period under s. Ins 19.20.

(2) An insurer may not accept waiver of coverage under a policy from a new entrant who is currently covered under the plan established ch. 149, Stats., and shall provide coverage under the policy to the new entrant unless the new entrant is not eligible under a class permitted under s. Ins 19.20.

(3) An insurer's policy shall not apply, or permit application of, a probationary period which must be met before a new entrant is eligible for coverage under a policy, or a similar limitation, that is longer than 6 months.

(4) An insurer may not add coverage restrictions or limitations under a policy because of the risk characteristics of a new entrant.

(5) An insurer may assess a risk load to the premium rate associated with a new entrant. An insurer issuing a small employer policy shall comply with s. 635.05, Stats., and s. Ins 19.60 (3) (d).

(6) An individual electing coverage under s. 632.746 (6), Stats., may be subject to no more than a 12-month preexisting condition exclusion under s. 632.76 (1) (b), Stats.



**Ins 19.35 Late enrollees.** (1) An insurer shall provide under a policy for an enrollment period during which a late enrollee is entitled to enroll in coverage under the policy. The insurer shall provide an enrollment period of at least 30 days after the date the late enrollee requests coverage is notified of the opportunity to enroll. An insurer may restrict its offer to late enrollees to those eligible under a class permitted for the initial enrollment period under s. Ins 19.20.

(2) An insurer may apply a preexisting condition exclusion or affiliation period or a combination of both to a late enrollee but the total period subject to a preexisting condition or affiliation period may not exceed 18 months. Any preexisting condition exclusion period imposed under this section must be consistent with s. 632.746, Stats.

(3) An insurer may assess a risk load to the premium rate associated with a late entrant, consistent with the requirements of s. 635.05, Stats., and s. Ins 19.60 (3) (d).

**Ins 19.40 Discrimination among employees prohibited.** (1) An insurer may not accept a waiver of coverage, if the insurer, or an insurance intermediary for the insurer, reasonably should know that the employer pressured or unfairly induced the employee or dependent of an employee to decline coverage due to the individual's risk characteristics.

(2) An insurance intermediary shall notify an insurer in writing, prior to submitting an application for coverage with the insurer on behalf of an employer, or prior to transmittal of a waiver, of any circumstances that would indicate that the employer pressured or unfairly induced an employee or dependent of an employee to decline coverage due to the individual's risk characteristics.

## SUBCHAPTER II

## SMALL EMPLOYER HEALTH INSURANCE

**Ins 19.50 Waiver of coverage under a small employer policy.** (1) An insurer issuing a small employer policy shall, during the initial enrollment period, cover all the eligible employers and their dependents, except an insurer may permit an individual to decline coverage in the initial enrollment period if the insurer determines:

(a) The individual has coverage under a comprehensive health benefit plan or other comprehensive health benefit arrangement, other than the plan established under ch. 149, Stats.;

(b) The individual elected coverage under another policy during an enrollment period permitted under s. Ins 19.20 (2);

(c) The individual does not have a risk characteristic or other attribute that would be the sole cause for the insurer to make a decision with respect to premiums policy that is adverse to the employer; or

(d) The individual is not enrolled in the plan established under ch. 149, Stats., and the annualized premium contribution to be paid by the eligible employee on behalf of the employee or the dependent of the employee would exceed 10% of the annualized gross earnings of the eligible employee from the employer.

(2) An insurer may permit an individual to decline coverage under a small employer policy under sub. (1) only if the insurer complies with ss. Ins 19.40 and 19.65.

**Ins 19.55 Disclosure requirements.** (1) Before completing an application for a small employer policy, an agent shall provide the small employer or representative of the small employer or the individual applicant with a form stating the information required under s. 635.11 (1m) to (3m), Stats. The agent shall sign and date the form certifying that he or she made the required disclosure and shall obtain the signature of the small employer or representative of the small employer or the individual applicant on the form. The agent shall give one copy of the completed form to the person who signed it. The agent or small employer insurer shall retain one copy of the completed form.

(2) An insurer that solicits the sale or sells small employer policies without using agents shall, with any solicitation material, provide the small employer or individual applicant with a form stating the information required under s. 635.11 (1m) to (3m), Stats. The insurer shall secure with or as part of each application a form signed by the small employer, a representative of the small employer or individual applicant stating that he or she has received the information. The small employer insurer shall provide a copy to the person who signed the form no later than the date the policy is issued.

**Ins 19.60 Regulation of rates.** (1) (a) Each insurer shall identify a set of rates applicable to all combinations of case characteristics and benefit design characteristics that serves as the set of midpoint rates for small employer policies. These rates shall be represented by any combination of rates and rating factors that satisfy the following:

1                   1. All differences among rates in the set shall be in accordance with the insurer's rate manual  
2 or rating procedures and shall be based on the actuarially determined values of the differences in case  
3 characteristics and benefit design characteristics.

4                   2. The differences among the rates may not reflect any differences due to such factors as the  
5 claim experience, health status and duration of coverage of an individual policy or a collection of policies  
6 grouped according to anything other than case characteristics or benefit design.

7                   (b) The set of midpoint rates identified in par. (a) shall apply during a specified period which  
8 shall not be less than one calendar month.

9                   (2) An insurer may vary a rate for small employer policy from the midpoint rate applicable to  
10 small employer policies with the same case characteristics and benefit design characteristics by no more  
11 than 30%.

12                   (3) (a) For the purpose of complying with s. 635.02 (3), Stats., and this section, "class of  
13 business" means a group of policies with the same or similar benefit design whose rates are based wholly  
14 or partly on their aggregate loss experience.

15                   (b) An insurer shall maintain sufficient documentation so that each of the following distinct  
16 components can be identified:

17                   1. The percentage change in the new business premium rate measured from the rating  
18 period in which the small employer was last rated to the current rating period or, in the case of a class of  
19 business for which the insurer is not issuing new small employer policies, the corresponding change in  
20 the base premium rate.

21                   2. The percentage changes due to adjustments in case characteristics, determined in  
22 accordance with the insurer's rate manual or rating procedures.

23                   3. The percentage change due to adjustments in benefit design, determined in accordance  
24 with the insurer's rate manual or rating procedures.

25                   4. The percentage change due to such rating factors as claim experience, health status and  
26 duration of coverage, determined in accordance with the insurer's rate manual or rating procedures.

1 (c) Each renewal rate, regardless of whether the rate represents an increase, shall be limited  
2 to the previous rate adjusted by the combination of the 4 components specified in par. (b) with the  
3 following restrictions on the experience component specified in par. (b) 4:

4 1. The experience component shall be limited to 15% per year, adjusted proportionately for  
5 rating periods of less than one year.

6 2. For a policy issued before March 15, 1992, subd. 1. applies, except if the premium rate  
7 exceeds the midpoint rate by more than the percentage specified in sub. (2) (a) for the applicable period  
8 for policies with the same case characteristics and benefit design characteristics, the experience  
9 component may not exceed 0%.

10 (d) For a rate change made before the end of the policy term due to the addition of a new  
11 entrant, late enrollee, or an individual eligible under s. 632.746 (6) or (7), Stats., par. (c) applies, except  
12 that:

13 1. The new business rate change component specified in par. (b) 1. may not be applied at  
14 that time.

15 2. The experience component specified in par. (b) 4. may not exceed 15% per year, adjusted  
16 proportionately to the time remaining in the policy term.

17 3. The experience component specified in par. (b) 4., when combined with the experience  
18 component of the last scheduled rate renewal and any other subsequent rate changes during the current  
19 policy term, shall not exceed the limit specified in par. (c) 1. or 2., whichever applies.

20 **Ins 19.65 Documentation of voluntary waiver.** (1) An insurer shall require each employer  
21 that applies for a small employer policy, as part of the application process, to provide a complete list of  
22 eligible employees and dependents of eligible employees of the employer. The insurer shall require the  
23 employer to provide appropriate supporting documentation, such as the state unemployment or worker's  
24 compensation quarterly reporting forms, to verify the information required under this section.

25 (2) An insurer shall secure a waiver signed by the eligible employee on behalf of the employee  
26 or the dependent of the employee with respect to each eligible employee, and each dependent of an eligible  
27 employee, who declines an offer of coverage under a small employer policy, whether during an initial  
28 enrollment period or as a new entrant. The insurer shall include on the waiver and require:

1 (a) A certification that the individual who declined coverage was informed of the availability of  
2 coverage under the policy;

3 (b) That the reason for declining coverage be stated; and

4 (c) A written warning of the consequences which may be imposed on late enrollees.

5 (3) An insurer shall obtain, with respect to each individual who submits a waiver under sub.  
6 (2) in connection with an initial enrollment period, information sufficient to establish that the waiver may  
7 be accepted under s. Ins 19.50 (1).

8 (4) An insurer shall maintain waivers required under sub. (2), the information required to be  
9 obtained under sub. (3) and notifications under s. Ins 19.40 (2), for a period of 3 years or until the policy  
10 terminates, whichever is later.

11 (5) An insurer may not issue coverage to an employer that refuses to provide the list required  
12 under sub. (1), a waiver required under sub. (2) or information required under sub. (3).

13 **Ins 19.70 Fraud or failure to pay premium.** An insurer is not required under s. 635.19 (1)  
14 to issue a small employer policy to or through a small employer if:

15 (1) The insurer previously terminated a small employer policy issued to or through the small  
16 employer;

17 (2) The insurer terminated the small employer for the reasons permitted under s. 632.749 (2)  
18 (a) or (b), Stats.; and

19 (3) The effective date for the requested small employer policy is within one year of the  
20 termination date of the previous small employer policy.

21 **Ins 19.75 Small employer certificate of compliance.** (1) The annual certification of  
22 compliance required under s. 635.13, Stats., shall be submitted in the form prescribed by the office.

23 (2) In addition to the annual certification required under sub. (1), the commissioner may  
24 require a small employer insurer to furnish additional information including, but not limited to, the  
25 following, using the form and method of transmittal prescribed by the commissioner:

26 (a) Rate manuals or exhibits of all rating factors used for each class of business.

27 (b) Sample data of small employers including premiums charged and rating factors applied  
28 for case characteristics and benefit design characteristics.

1 (c) An inventory of case characteristics used by the insurer for small employer policies since  
2 the last certification date.

3 (d) An exhibit showing the difference in new business premium rates between the current  
4 certification date and the last certification date.

5 (e) A description of how midpoint rates are determined.

6 Note: The form required under sub. (1), OCI 26-051, may be obtained from the Office of the  
7 Commissioner of Insurance, P. O. Box 7873, Madison, WI 53707-7873.

8 **Ins 19.80 Network plan guarantee issue standards.** An insurer limiting small employers  
9 who may apply for coverage under s. 635.19 (2) (a) 1., Stats., may make this determination on any  
10 uniform basis but only if it applies written standards which are reasonable and consistently applied to all  
11 small employers without regard to health status or other underwriting criteria.

12 **Ins 19.90 Fair marketing standards in the small employer market.** (1) (a) Unless  
13 otherwise permitted under par. (b), an insurer which offers or renews a small employer policy shall  
14 actively market its health benefit plans to all small employers and without regard to the size of the small  
15 employer group by:

16 1. Actively marketing in each segment of the small employer market at least one form of a  
17 policy which provides comprehensive health benefits.

18 2. Actively marketing in each area of the state at least one form of a policy which provides  
19 comprehensive health benefits, except a small employer insurer may:

20 a. Limit marketing to the provider service areas for the health maintenance organization or  
21 preferred provider plans if it limits the policies it offers to policies which are a health maintenance  
22 organization plans or preferred provider plans; or

23 b. Limit its marketing of policies to selected areas which the small employer insurer can  
24 demonstrate by clear and convincing evidence are selected for justifiable business reasons other than  
25 desirable demographic characteristics related to risk selection.

26 (b) An insurer which markets and issues small employer policies only to small employers who  
27 are eligible to participate in a bona fide association may limit marketing to only those small employers but  
28 only if the insurer investigates and makes the determination required under sub. (5) (a).

1 (2) An insurer shall provide written notice of the benefits, preexisting condition waiting  
2 periods, and enrollment information for each available small employer policy to each small employer who  
3 applies within 10 working days of the date the insurer receives the small employer's application. The  
4 insurer shall provide the notice directly or through an authorized insurance intermediary. The insurer  
5 shall provide the small employer with sufficient copies of the notice to distribute to each eligible employee  
6 and shall ask the employer to promptly distribute a copy to each eligible employee. The insurer shall make  
7 reasonable efforts to obtain, within 20 business days after the insurer issues a health benefit plan to a  
8 small employer, certification that the small employer promptly distributed the notice to all eligible  
9 employees.

10 (3) (a) An insurer shall provide a price quote to a small employer directly or through an  
11 authorized insurance intermediary within 15 working days of receiving a request for a quote and the  
12 information necessary to provide the quote. An insurer shall notify a small employer directly or through  
13 an authorized insurance intermediary within 7 working days of receiving a request for a price quote of any  
14 additional information needed by the small employer insurer to provide the quote.

15 (b) A small employer insurer may not apply more stringent or detailed requirements related to  
16 the application process for differing health benefit plans offered by the insurer to groups of equivalent  
17 size.

18 (4) An insurer shall establish and maintain a toll-free telephone service to provide information  
19 to small employers regarding the availability of small employer health benefit plans in this state. The toll-  
20 free telephone service is not required to be dedicated to this purpose. The service shall provide  
21 information to callers on how to apply for coverage from the insurer. The information may include the  
22 names and phone numbers of insurance intermediaries actively marketing in the geographic area  
23 proximate to the caller or other information that is reasonably designed to assist the caller to locate an  
24 authorized insurance intermediary or to otherwise apply for coverage.

25 (5) An insurer may not require a small employer to join or contribute to a bona fide  
26 association as a condition of being accepted for small employer policy but only if:

27 (a) The insurer investigates and determines the association is a bona fide association as  
28 defined in s. 632.745 (3), Stats., and the requirements of this subsection are met;

1 (b) The requirement is reasonable and in compliance with s. 635.19 (5), Stats.;

2 (c) The requirement does not have the purpose of discouraging small employers from  
3 applying for coverage;

4 (d) The requirement is not related to the health status or claim experience of the small  
5 employer or employees or dependents of employees of small employers;

6 (e) The requirement is applied consistently to all small employers applying for coverage; and

7 (f) The insurer accepts all applications from small employers who join the bona fide  
8 association.

9 (6) An insurer may not require, as a condition to the offer or sale of a small employer policy to  
10 a small employer, that the small employer purchase or qualify for any other insurance product or service  
11 or purchase or qualify for a health benefit plan which includes coverage other than health coverage.

12 (7) (a) An insurer offering group health insurance coverage through a trust or association or  
13 individual health benefit plans in this state shall investigate and determine whether the plans or coverage  
14 are subject to this subchapter, ss. 632.745 to 632.749, Stats., or ch. 635, Stats. An insurer shall obtain  
15 the following information from applicants for individual and group health benefit plans at the time of  
16 application and shall include the information on the application:

17 1. Whether or not any portion of the premium will be paid by or on behalf of a small employer,  
18 either directly or through wage adjustments or other means of reimbursement;

19 2. Whether or not any portion of the premium will be collected by or with the cooperation of a  
20 small employer; and

21 3. Whether or not the prospective policyholder, certificate holder or any prospective insured  
22 individual intends to treat the health benefit plan as part of a plan or program under Section 162 [other  
23 than Section 162 (1)], Section 125 or Section 106 of the United States internal revenue code.

24 (b) If an insurer violates par. (a), in addition to any penalty imposed for the violation, it is  
25 presumed that any health benefit plan issued is a small employer policy.

26 (c) An insurer is not relieved from complying with ch. 635, Stats., and there is no presumption  
27 that ch. 635, Stats., does not apply merely because the insurer has complied with the minimum obligation  
28 to investigate the status of applicants imposed under this subsection.



1 (8) A small employer insurer shall annually file information with the commissioner related to  
2 health benefit plans issued by the small employer insurer to small employers in this state in the form  
3 prescribed by the commissioner.

4 Note: Copies of forms referred to in this section may be obtained without charge from the  
5 Office of the Commissioner of Insurance by sending a written request to P. O. Box 7873, Madison,  
6 Wisconsin 53707-7873.

7 **SECTION 3.** These changes will take effect on the first day of the first month after  
8 publication, as provided in s. 227.22 (2) (intro.), Stats.

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12 Dated at Madison, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_ 1999.  
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18 Connie L. O'Connell  
19 Commissioner of Insurance  
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